

ARKANSAS SUPREME COURT

No. CR 00-1384

NOT DESIGNATED FOR PUBLICATION

RODNEY BARNETT
a/k/a Rodney E. Barnett
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered January 25, 2007

PRO SE PETITION TO REINVEST
JURISDICTION IN TRIAL COURT TO
CONSIDER A PETITION FOR WRIT
OF ERROR *CORAM NOBIS* [CIRCUIT
COURT OF MISSISSIPPI COUNTY,
CHICKASAWBA DISTRICT, CR 94-
372]

PETITION DENIED.

PER CURIAM

In 2000, Rodney Barnett, also known as Rodney E. Barnett, was convicted by a jury of the 1994 capital murder of Lester Frazier and was sentenced to life imprisonment without parole in the Arkansas Department of Correction. This court affirmed. *Barnett v. State*, 346 Ark. 11, 53 S.W.3d 527 (2001). Subsequently, petitioner sought postconviction relief pursuant to Ark. R. Crim. P. 37.1. The trial court denied the *pro se* petition and this court affirmed. *Barnett v. State*, CR 02-1166 (Ark. Nov. 13, 2003) (*per curiam*). He also sought relief through various proceedings in federal court.

Now before us is petitioner's *pro se* petition to reinvest jurisdiction in the trial court to consider a petition for writ of error *coram nobis*.¹ The petition for leave to proceed in the trial court with a petition for writ of error *coram nobis* is necessary because the circuit court can entertain a petition for writ of error *coram nobis* after a judgment has been affirmed on appeal only after we

¹For clerical purposes, the instant pleading was assigned the same docket number as the direct appeal of the judgment.

grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (*per curiam*).

A writ of error *coram nobis* is an extraordinarily rare remedy, more known for its denial than its approval. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). We have held that a writ of error *coram nobis* was available to address certain errors that are found in one of four categories: insanity at the time of trial; a coerced guilty plea; material evidence withheld by the prosecutor; a third-party confession to the crime during the time between conviction and appeal. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (*per curiam*).

For the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). A writ of error *coram nobis* is appropriate only when an issue was not addressed or could not have been addressed at trial because it was somehow hidden or unknown and would have prevented the rendition of the judgment had it been known to the trial court. *Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005) (“*Echols Error Coram Nobis IP*” or “*Echols ECN IP*”); *Brown v. State*, 330 Ark. 627, 955 S.W.2d 901 (1997). *Coram nobis* proceedings are attended by a strong presumption that the judgment of conviction is valid. *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984), citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975).

Here, petitioner claims that the prosecutor engaged in selective and vindictive prosecution and withheld material evidence to bolster the testimony of a witness. The witness, Larry Black, testified at trial that he shared a cell with petitioner in Mississippi County, and during this time, petitioner confessed to the murder of Mr. Frazier. Petitioner argues to this court that at no time did he share a cell with Mr. Black, thus making a confession to Mr. Black impossible. He maintains that the prosecutor withheld records from the jail that supported his argument. As proof of his claim,

petitioner attached to his pleading the purported affidavit of Barry Anderson, whose signature is notated as being a Mississippi County jailor.

While petitioner argues that a petition for writ of error *coram nobis* is proper based on material evidence withheld by the prosecutor, rulings by this court in petitioner's previous appeals do not support his contention that the prosecutor withheld any evidence. In affirming the denial of petitioner's postconviction petition, we noted that a hearing was held prior to the trial regarding counsel's motion to suppress Mr. Black's testimony. The trial court denied the suppression of the testimony, but granted counsel a continuance in order to investigate Mr. Black's allegations of petitioner's confession. We also note that in his direct appeal, petitioner raised other issues regarding Mr. Black's testimony, but did not raise this particular issue at that time.

The substance of Mr. Black's testimony was disclosed to trial counsel prior to the start of the jury trial. Mr. Black testified at petitioner's trial, and trial counsel was free to cross examine Mr. Black on whether he had ever shared a jail cell with petitioner. Thus, Mr. Black's claim that he shared a jail cell with petitioner was made part of, and was not extrinsic to, the record, and his testimony was not hidden or unknown.

Petitioner has therefore failed to show grounds for reinvesting jurisdiction in the trial court to consider a petition for writ of error *coram nobis*. As no substantive basis exists for granting the petition, we need not reach the issue of whether petitioner exercised due diligence in filing this petition. We deny the petition to proceed with a petition for writ of error *coram nobis*.

Petition denied.